

Renewed Petition
submitted July 2009

[001] This follows a Decision, dated 19 June 2009, to DISMISS our Petition dated 08 April 2009 to accept an unintentionally delayed claim under 35.USC.120 for the benefit of priority to prior-filed application number 10/330,108 filed 30 December 2002.

[002] Amendments

We request that an amendment to the specification be entered, as detailed on the attached sheet.

The amendment affects the sentence, as submitted 02 October 2008, located between the title and the paragraph numbered [001] of the as-filed specification.

The title and paragraph [001] are included in the attachment to show the context.

[003] We request that the Petition now be granted.

Submitted by:

/Anthony Asquith/
Anthony Asquith
Regn 32373

Enclo:

- amendment to the specification (1 page)

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[004] Following the above, we make a **Further Request**. We request that the following points be considered.

[005] We agree that Rule 1.78(a)(2)(i) does require that the application data sheet or the specification must contain an indication as to the Continuity TYPE (being "continuation-in-part", in this case.)

[006] We enclose a printout of page -9- from the Patent Application Data Sheet Format Guide, which is available on the PTO website. We refer to the NOTE at the bottom of page -9-.

The thrust of this NOTE is that, if the ADS reference satisfies 35.USC.120, there is no need to amend the specification. Now, 35.USC.120 does *not* require that the Continuity TYPE be specified. The requirement to specify Continuity TYPE comes from Rule 1.78.

Therefore, the NOTE on page -9- is *wrong*.

[007] Of course, the Patent Act and Rules state the law, not the Guidelines. And it is up to the applicants to comply with the Act and Rules. However, in a case where the PTO Guide is wrong, in all fairness applicants should be allowed to assume that the PTO will do what it can to enable the matter to be corrected as painlessly as possible. The PTO should not take the applicant to task, at large expense, for following those incorrect guidelines.

That is not what happened in this case. Nothing in the voluminous materials supplied by the PTO on this matter can be regarded as explaining to the applicant that the problem was simply that our ADS failed to mention the Continuity TYPE. The 19 June 2009 Dismissal of the Petition was the first time we learned from the PTO that that was indeed the problem.

[008] We do not question the requirement under 1.78(a)(2)(i) that we must state the Continuity TYPE. What we do request is that, under the circumstances, at least the petition fees should be refunded.

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- page -9- from PTO Guide (1 page)

